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# THE INTERIM

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## SUBCOMMITTEE ON INSURANCE ISSUES

Subcommittee Holds Third Meeting...The Subcommittee on Insurance Issues held its third meeting on Friday, April 8 at the State Capitol. The purpose of the meeting was to discuss the medical malpractice climate in Montana.

Subcommittee Hears About Status of Medical Malpractice Information...Staff presented a report on the status of medical malpractice information in Montana. The information on medical malpractice is gathered by three different agencies: the Insurance Commissioner (Commissioner), the Board of Medical Examiners (Board), and the Montana Medical-Legal Panel (Panel). The Panel maintains records of all proceedings before the Panel and compiles the information into regular reports. The Board gathers information on alleged professional negligence on the part of physicians, as well as on settlements in favor of claimants. The Board is very protective of the confidentiality of its records because they contain the names of doctors and patients. Therefore, the Board issues no report using its information. However, for investigation purposes the Board does use the information to look for repeat claims against individual doctors. The Commissioner collects information on claims and lawsuits filed against health care providers, including final disposition of lawsuits, and any monetary awards or settlements. The information is not stored in a usable data base, nor does the Commissioner issue any reports using the information.

Staff was able to access information from all three sources, as well as from the insurance companies themselves. The data was incomplete and, in many instances, raised more questions than it answered. Nevertheless, using the information, staff prepared a report on the climate of medical malpractice in Montana. The staff's findings were limited by

the incompleteness of the data. However, some general trends could be discerned.

Subcommittee Hears Staff Report...There are currently 1,460 physicians in Montana. Approximately three-fourths of these physicians are insured by three companies: The Doctors' Company, Utah Medical Insurance Association, and St. Paul Fire and Marine Insurance Company. The remaining physicians are covered through a hospital or clinic, through the federal government, or through other carriers, or do not carry professional liability insurance at all. Over the last 10 years, roughly two to three percent of the physicians in Montana have been involved in medical malpractice lawsuits.

Insurance premium rates rose steadily in the 1980s and peaked in 1988. Rates then began to decline and have remained fairly constant since 1990.

Over a 10-year period, 1984-1993, for the three top companies, 1,400 claims were filed versus 300 lawsuits. Of those 1,400 claims, 132 settled without trial, 19 went to trial, and only 4 verdicts were returned for the plaintiff. The majority of the settlements were lower than \$150,000. The average claim paid by the three largest companies over the last 10 years is \$24,000 for The Doctors' Company, \$73,000 for St. Paul, and \$64,000 for Utah Medical.

For a complete copy of the report entitled "Medical Malpractice in Montana", contact Susan Fox or Connie Erickson at the Legislative Council, 444-3064.

MT Medical-Legal Panel Reports to Subcommittee...The Montana Medical-Legal Panel is a screening panel; before a suit can be filed against a physician or hospital, the claim must be heard by the Panel. However, the Panel results are not binding and the parties may go on to suit and trial. The purpose of the Panel is to force the early resolution of claims, to reduce the number of cases filed, and to reduce the number of cases that go to trial. The Panel issues advisory opinions as to whether there is evidence of negligence and whether the evidence is sufficient to warrant a trial. The Panel uses the data from the claims to identify patterns of negligence, to see if insurance rates are excessive, and to prevent future medical injuries.

Gerald Neely, legal counsel to the Panel, presented a report entitled "Claims Before the Montana Medical-Legal Panel, 1977-1993". The information presented in the report was extensive, but some overall conclusions can be drawn.

A dramatic rise in the number of claims in the late 1970s through the early 1980s was followed by a period of relative stability. However, since 1991 the number of claims against health care providers has begun to rise again. Over 1,600 physicians have been involved in claims from 1977 to 1993. Claims against physicians have more than doubled in number during that same time period. Nearly one-third of the claims filed

in the past 15 years against long-term care facilities have been filed since 1990, even though these facilities have been part of the Panel since 1977. From 1990 to 1993, the rate of increase for claims against physicians was five percent; for hospitals it was 15 percent. Montana's frequency of claims against physicians is generally higher than the national average frequency of claims. However, Montana's rate is lower than in states that have no pre-trial screening panels.

Claims brought before the Panel were disposed of prior to a hearing, either by settlement or abandonment, in about 19 percent of the cases heard by the Panel. Only a very small number of physicians have had more than one adverse result in connection with Panel claims. The number of claims is not directly related to specific patterns of negligence, especially repeated negligence on the part of a select number of "bad" practitioners. The number of claims, with some exceptions, is geographically related to the number of people in a community and the number of lawyers in a community. In a survey of physicians and lawyers on their opinions of the Panel, 87 percent supported the continuation of the panel. Of this number, 24 percent recommended some changes. Those recommendations included allowing Panel results to be admitted at trial, making the Panel results binding, changing the number and type of panelists, and changing the assessment allocation. Almost 80 percent of those responding expressed satisfaction with the overall operation of the Panel. Over 80 percent felt that the good work of the Panel outweighed any problems that the Panel may have.

Interested Persons Offer Views on Medical Malpractice in Montana...The remainder of the meeting was devoted to hearing from interested persons and organizations regarding the climate of medical malpractice in Montana. The Montana State AFL-CIO urged the Subcommittee to not consider any proposals that would jeopardize the legitimate protections provided to victims of medical malpractice or that allow victims full and fair recourse through the court system.

The Montana Trial Lawyers Association offered testimony from a number of witnesses, including plaintiffs' attorneys and victims of medical malpractice. According to these witnesses, the problem is with medical negligence not with medical liability. The solutions proposed included peer review within the medical community, preventive training for physicians, physician experience rating for medical malpractice insurance, and a more efficient system for hearing small medical malpractice claims.

The representatives of the Trial Lawyers Association also opposed caps on noneconomic damages because plaintiffs are unable to predict what future expenses they may have as a result of their injuries. Also, caps on noneconomic damages can actually result in a reduction of economic damages. Caps were also opposed by the Montana Senior Citizens Association and the Montanans for Universal Health Care (MUHC).

MUHC and the Montana Education Association felt that it was premature to address the issue of medical malpractice in light of the

current health care reform discussions. Both groups urged the Subcommittee to coordinate its efforts with that of the Health Care Authority.

The Montana Medical Association supported a cap on noneconomic damages. The Association also addressed some misperceptions as to what constitutes economic and noneconomic damages.

Patricia England, Executive Secretary of the Board of Medical Examiners, reviewed the Board's work in investigating complaints against physicians. Montana has improved its investigatory practices over the last five years. For example, in regard to impaired physicians, the Board has developed a Professional Assistance Program to assist physicians suffering from chemical dependency or psychiatric illness.

The Doctors' Company, the medical malpractice insurer serving the largest number of physicians in Montana, offered testimony in support of caps on noneconomic damages. In states that have such caps, there is a greater stability in claims' experience. In addition, caps have proved to be very significant in containing medical malpractice premiums. In addition to caps, The Doctors' Company supports structured contingency fees for attorneys.

The St. Paul Fire and Marine Insurance Company cautioned the Subcommittee against drawing conclusions from the premium rate information that had been presented to them. Ratemaking is a very complicated process, involving many factors that can differ from company to company. St. Paul Fire and Marine also expressed its belief that Montana offers a good, competitive climate for medical malpractice insurers.

Subcommittee to Meet in June...The Subcommittee will meet again on June 24. At that meeting, representatives from the Insurance Commissioner's Office will talk about medical malpractice from a regulatory perspective and about ratemaking. Legislative Council staff will also present information on the correlation between premium rates and medical malpractice reform in other states.

## LEGISLATIVE FINANCE COMMITTEE

Committee to Meet on June 9 and 10...The Legislative Finance Committee will meet on June 9 and 10 in Room 104 of the State Capitol. Reports to be presented by the staff of the Legislative Fiscal Analyst will include: proposed budget amendments; health care provider rates; update on the Montana Science and Technology Alliance; a report on progress of implementation of House Bill 7, the revised budget

process for the 1997 biennium; and a presentation of agency reports required by House Bill 2 to be submitted by June 1.

## **SUBCOMMITTEE ON REALIGNMENT OF JOINT APPROPRIATIONS SUBCOMMITTEES**

LFC Subcommittee to Meet...At its March 11 meeting, the Legislative Finance Committee (LFC) appointed a subcommittee to study the possible realignment of appropriation subcommittee agency and program assignments as well as subcommittee workloads. LFC members selected to serve on the Subcommittee are Senator Harding (Chair), Senator Weeding, Representative Peck, and Representative Grady. Representative Cobb was appointed as an ex-officio member.

Senator Harding has called a meeting of the Subcommittee for Friday, May 13, at 9:00 a.m. in Room 108 of the State Capitol. At that meeting the LFA staff will present options to the present subcommittee structure for review and discussion. Based upon this review and with guidance from the Subcommittee, the LFA will narrow the options and present the Subcommittee's recommendations to the June 9 meeting of the LFC.

## **SUBCOMMITTEE ON WORKERS' COMPENSATION ALTERNATIVES**

Subcommittee on 24-Hour Coverage to Meet...There will be a meeting of the 24-Hour Coverage Subcommittee on May 20, beginning at 10:00 a.m. There will be a panel discussion with representatives from the self-insurers, private insurers, State Fund, and State Auditor.

Sara Harmon, Administrator of the Workers' Compensation Division of the Oregon Department of Insurance and Finance will attend and will share with the Subcommittee some of Oregon's experience with 24-hour coverage.

Staff Report Available...A report entitled "Workers' Compensation, Health Care, and Disability Issues: 24-Hour Coverage as an Alternative" is available from the Legislative Council. To request a copy, please contact Susan Fox at the Council, 444-3064.

## SUBCOMMITTEE ON VETERANS' NEEDS

Subcommittee Hears About New Veterans' Home...The Subcommittee on Veterans' Needs held a meeting on April 14. Bob Anderson, Special Services Division Administrator, Department of Corrections and Human Services (DCHS), gave the Subcommittee an update on the selection of the Glendive Medical Center as the vendor for the Eastern Montana Veterans' Home being built in Glendive. Construction of the Veterans' Home is ahead of schedule and will be completed by the end of October. Recruitment of individuals who need nursing care will begin in June. (For more information on how to put an individual on the waiting list, contact Bob Anderson, DCHS.) Once construction is completed and there are at least 37 individuals on the waiting list, Glendive Medical Center will begin a 90-day start-up phase to staff the facility and prepare for operation.

Mr. Anderson also updated the Subcommittee on the state contract with Anaconda/Deer Lodge County for the Galen campus and the current VA State Home Program construction site criteria.

Staff Reports...Staff presented reports on "Montana Board of Housing Programs and VA-Guaranteed Loans" and "The Continuum of Long-Term Care and Resources Available to Veterans". To request of copy of either report, please contact Susan Fox at the Legislative Council, 444-3064.

Subcommittee Discusses Closure at Veterans' Medical Center...Senator Bruski-Maus shared a "VA Medical Care Fact Sheet" with the Subcommittee and expressed her concerns regarding the closure of the surgical unit at the Veterans Affairs Medical Center in Miles City. The Subcommittee members decided to individually write letters regarding the situation.

Subcommittee Discusses Possible Recommendations...The Subcommittee used an "Issues and Options" paper to refine the areas to be pursued as potential recommendations. Issues for which options were discussed included: the continuum of long-term care, burial benefits, state home loan programs for veterans, and honoraria for Desert Storm/Desert Shield, Panama, Lebanon, and Grenada veterans.

Subcommittee to Meet in June...The next Subcommittee meeting is scheduled for June 30 in Helena.



## WATER POLICY COMMITTEE

Committee Looks at Instream Flow...The Water Policy Committee toured the Big Hole River Basin during its April 7 meeting. The tour, part of the Committee's interim study on instream flow, allowed Committee members to better understand the specific hydrology of the basin and the concerns of local water users. The tour was well attended by over 50 basin residents and other interested citizens. The Committee continued its look at instream flow issues with a panel discussion that evening in Divide, Montana. Public participation was high at this meeting as well, with over 100 individuals in attendance.

Committee Holds Public Meeting on Late Claims...The Water Policy Committee held a public meeting on April 8, in Dillon to discuss the late claims study. The Committee scheduled a panel discussion involving federal, state, and private attorneys to discuss concerns regarding the federal McCarran Amendment and the impact of late claims on the state's water adjudication process. Following the panel discussion, the Committee heard public comment on the 1993 SB 310 legislation and solicited comments on how the law might be improved. The Committee will present its findings and any recommendations to the Legislature in 1995. A summary transcription of this portion of the meeting is available.

Stream Flow Symposium a Success...The educational symposium regarding stream flow issues, held on April 21 and 22 at MSU in Bozeman, was a success, with over 200 public officials, state and local government employees, attorneys, and members of the agricultural and recreational communities in attendance. The purpose of the symposium, co-sponsored by the Water Policy Committee, the Public Land Law Review of the University of Montana, the Montana Watercourse, and the Water Resources Center, was to provide a forum for learning and for broad-based discussion of law, science, values, strategies, and local initiatives related to streamflow management in Montana. To fulfill this purpose, the speakers included legal and scientific experts and involved citizens. The Big Hole Basin Panel from the Committee's April 7 meeting also made a presentation at the symposium.

May Meeting Scheduled...The next Water Policy Committee meeting is scheduled for Monday and Tuesday, May 23 and 24 at the CottonWood Inn in Glasgow. The Committee will receive public testimony on the late claim study Monday evening and hold a short administrative meeting the following morning to discuss the completion of various interim studies.

For more information on these issues, please contact the EQC staff at 444-3742.

## ENVIRONMENTAL QUALITY COUNCIL

EQC to Hold May Meeting...The Environmental Quality Council (EQC) will meet Friday, May 6 in Room 104 of the State Capitol, beginning at 8:30 a.m. A number of issues will be discussed.

Transportation Energy Collaborative...The second meeting of the EQC Transportation Energy Collaborative will be held on Wednesday, May 11 at 9:00 a.m. in the DNRC director's conference room. The agenda for the meeting includes discussion of ground rules and energy/transportation policy goal statements, as well as a review of issue papers prepared by the MT Dept. of Transportation on bicycle and pedestrian issues, economic development, and intermodal freight and freight mobility. The EQC will receive an update on the Collaborative's status at its next meeting.

Hazardous Waste Management Study... The EQC's Hazardous Waste Management Working Group will be holding its next meeting on May 12 and 13. The first day will focus solely on issues related to hazardous waste management by conditionally exempt small quantity generators (CESQG's). The Working Group will be hearing presentations from MSU Extension Service on the status of education programs for CESQG's and from hazardous waste transporters on problems associated with collection and disposal in rural areas. The second day's agenda includes discussion of a final report from the siting subcommittee, continued analysis of the status and adequacy of the hazardous waste regulatory framework, and discussion of possible recommendations regarding CESQG's.

For information on meeting location and time, please contact EQC's Paul Sihler or Todd Everts at 444-3742.

SJR 29 Nondegradation Study...The EQC will continue its look at specific water quality nondegradation issues as requested under SJR 29. The Joint EQC/WPC SJR 29 Nondegradation Subcommittee will meet on May 5 and report back to the full Council regarding the revised DHES nondegradation rule package and nondegradation mitigation issues.

The Council will also continue its look into agency enforcement of the Water Quality Act, including receiving a report from the Legislative Auditor's Office on the on-going DHES Water Quality Bureau performance audit.

Other Issues...Other agenda items will include a staff report by the Collaborative Working Group on transportation energy policy development; an update on the bull trout issue; a staff-facilitated Council discussion on MEPA and the cumulative impacts analysis; and a tour of the Capitol building as part of the building renovation project.

For more information on these issues, please contact the EQC staff at 444-3742.

## REVENUE OVERSIGHT COMMITTEE

Special Improvement District Subcommittee to Meet...The Subcommittee studying the financing of special improvement districts will meet at 1:00 p.m. on Thursday, May 26 in Room 104 of the Capitol. The Subcommittee will refine some the issues raised at the last meeting and develop recommendations for consideration. Representatives of the County Treasurers' Association will discuss issues related to changing the period of redemption for delinquent property taxes and improvement district assessments.

Full Committee to Meet May 27...The Revenue Oversight Committee will meet at 9:00 a.m. on Friday, May 27 in Room 104 of the Capitol. Stan Nicholson will discuss the activities of the Montana Fiscal Forums. The purpose of the Fiscal Forums is to encourage citizen involvement in state and local budgeting issues. Patrick Montalban, Mountain States Resources, will discuss issues related to the taxation of stripper-well production.

Other items on the agenda include a report on revenue collections to date and a discussion on the property taxation of agricultural land.

## LEGISLATIVE COUNCIL

### LEGAL DIVISION

#### Ballot Measures Received:

- Individual Health Care Choice

Note: Pursuant to 13-27-202(2), MCA, copies of correspondence are available through the Secretary of State.

## COMMITTEE ON INDIAN AFFAIRS

Committee to Host Economic Development Forum...The Committee on Indian Affairs will meet on Friday, May 6 in Room 437 of the State Capitol. The Committee will conduct Committee administrative business from 10:00 a.m. to 10:30 a.m. Beginning at 10:30 a.m., the Committee will conduct a forum on economic development on Indian reservations. Representatives from Montana's Indian tribes and state and federal agencies will discuss ways in which state, federal, and tribal governments can work together to promote viable economic development activities on Indian reservations that will be beneficial to Indians and non-Indians alike.

## LEGISLATIVE AUDIT COMMITTEE

Audit Committee Meets...The Legislative Audit Committee met April on 21 in Room 104 of the Capitol Building. The following reports were presented:

### CONTRACTED AUDIT REPORTS:

#### Department of Transportation Utility Contract Review

This was a special report on the utility relocation audit of the Department of Transportation and eight utility companies for Federal Highway Projects BRF 4-2(10)45, Laurel Bridge, and BRF 16-1(27)1, East Bridge-Billings. The audit was conducted by Anderson ZurMuehlen & Co., P.C., and contains four report recommendations.

### FINANCIAL-COMPLIANCE AUDITS:

#### Department of Administration

An audit report was issued, covering the two fiscal years ending June 30, 1993. This audit report contains ten recommendations directed to the Department. The recommendations address:

- accountability for federal surplus property and other federal assistance;
- state financing alternatives related to office space rental rates and equipment purchases; and

- noncompliance with state accounting law and policy.

An unqualified opinion on the financial schedules presented in the report was issued.

#### Montana State Library

A financial compliance audit of the Montana State Library was performed for the two fiscal years ending June 30, 1993. The report contains one recommendation that addresses proper recording of advances received by the Library. The improper recording of the advances caused the issuance of a qualified opinion on the Schedules of Budgeted Revenue and Transfers In - Estimate and Actual and the Schedule of Changes in Fund Balance. An unqualified opinion was issued on the Schedules of Budgeted Program Expenditures by Object and Fund for both FY 92 and FY 93. The prior audit report contained two recommendations which the Library has implemented.

#### University of Montana

A financial-compliance audit of the University of Montana was performed for the two fiscal years ending June 30, 1993. The report contains 16 recommendations to the University to improve operations. Eight recommendations address enhancing compliance with state and federal laws and regulations. Five recommendations address enhancing accounting and reporting of financial activity. Three recommendations address other items. An unqualified opinion was issued on the financial statements of the University.

#### Western Montana College of the University of Montana - Bond Audit

A financial audit of the Western Montana College's Housing and Dining System Revenue Bonds Series 1966 and the Student Building Fees and Land Grant Income Bonds Series 1967 financial statements was performed for the fiscal year ending June 30, 1993. An unqualified opinion was issued on the financial statements and made no recommendations.

#### Montana State University

A financial compliance audit of Montana State University (MSU) was performed for the two years ending June 30, 1993. An unqualified opinion was given on the financial statements of MSU. The report contained 12 recommendations: five related to compliance with state laws, three designed to improve management control systems, and four concerned with proper entries to the financial records.

#### Northern Montana College

A financial-compliance audit of the Northern Montana College was performed for the two fiscal years ending June 30, 1993. The report contains six recommendations to the College. Two

recommendations relate to improving control procedures in the College's bookstore to reduce the likelihood of errors and irregularities. Another recommendation to the College is to improve controls over cash change funds at various departments on the campus. It was also recommended that the College ensure that auxiliary facilities generate revenue sufficient to meet debt service obligations as well as operating expenses. One recommendation was made to record expenditures in the proper fund in accordance with state law. The final recommendation involves ensuring charges made to federal assistance programs are allowable. An unqualified opinion was issued on the financial statements presented in the report.

#### Department of Agriculture

A financial-compliance audit of the Department of Agriculture was performed for the two fiscal years ending June 30, 1993. The report contains two recommendations concerning the use of non-General Fund moneys first, and noxious weed management program administrative costs. An unqualified opinion was issued on the financial schedules presented in the report.

#### Department of Livestock

A financial-compliance audit of the Department of Livestock was performed for the two fiscal years ending June 30, 1993. The report contains ten recommendations regarding:

- five prior audit recommendations not yet implemented;
- activity not recorded on the state's accounting records; and,
- state compliance issues.

An unqualified opinion was issued on the financial schedules presented in the report.

#### State Compensation Insurance Fund, Department of Administration

A financial-compliance audit of the State Compensation Insurance Fund (State Fund) was performed for the fiscal year ending June 30, 1993. The report contains five recommendations to the State Fund and one recommendation to the Department of Labor and Industry. Three recommendations to the State Fund relate to improving policies and procedures for claims management and case reserves. Another recommendation to the State Fund is to record adjustments to the estimated claims liability on the state's accounting records by fiscal year-end in accordance with state law. It was also recommended that the State Fund properly allocate depreciation expense to the Old Fund in accordance with state law. The recommendation to the Department of Labor and Industry relates to providing accurate

hospital rates to insurers in a timely manner. An unqualified opinion was issued on the financial statements presented in the report.

#### PERFORMANCE AUDITS:

##### Health Facility Licensure Program, Department of Health and Environmental Sciences

This performance audit evaluated the health care facility licensure function at the Department of Health and Environmental Sciences. Objectives of the audit included determining if the Department is in compliance with current licensing requirements and if the licensing program is meeting legislative intent. Several concerns were noted relating to program noncompliance, including finding health care facilities operating without a license. The audit also found that the Department is not always conducting facility inspections as required by statute. Program noncompliance issues are in part due to a disjointed review structure for health care facility regulation and weaknesses in administering the licensure program. Due to extensive changes in how health care is provided and due to several agencies sharing overall regulation, the auditors believe that the Governor should revisit the concept outlined in the one-step licensing statutes. Specific responsibilities need to be assigned to ensure all oversight and regulation of facilities is coordinated.

##### Montana Lottery Security, Department of Commerce

A performance audit was conducted regarding Montana Lottery security controls. Audit scope included work to determine implementation status of previous audit recommendations and to ensure that appropriate controls are in place to provide security over lottery operations. While overall security controls are in place, there are areas where changes would improve lottery security. Report recommendations include the need for:

- improving controls over warehouse access;
- improving the process for evaluating test results of Montana Cash drawing balls; and
- improving computer security controls.

Committee to Meet in June...The next meeting of the Legislative Audit Committee is tentatively scheduled for June 25.

## COMMITTEE ON CHILDREN AND FAMILIES

Brief Meeting Scheduled...Chairman Barnhart has scheduled a brief meeting of the Joint Oversight Committee on Children and Families for 10:00 a.m., Wednesday, May 11 in Room 108 of the Capitol. The focus of the two-hour morning meeting will be adult protective services. Doug Sternberg has prepared a report, "The Provision of Services to Montana's Elderly", that covers issues raised in the study resolution in Senate Bill No. 2, November 1993 Special Session. Interested persons are invited to discuss their concerns about the state's provision of adult protective services.

Committee to Meet With Governor's Interagency Coordinating Council...Following the Wednesday morning meeting, the Committee will join with the Governor's Interagency Coordinating Council and other participants in a Wednesday afternoon prevention program planning session at the Colonial Inn. The session will include a dinner meeting that night and a work session on Thursday, May 12.

Staff Reports Available...Two reports entitled "The Provision of Services to Montana's Elderly" and "History and Current Status of Laws Related to Child Protective Services" are available from the Legislative Council. To request a copy of either report, please contact Doug Sternberg at the Council, 444-3064.



## THE BACK PAGE

A tempest in a teapot has been brewing over Montana's tax burden relative to other states. Most recently, Rob Natelson, the chief architect of the effort to suspend the new income tax law (House Bill No. 671) and to refer it to the voters, claimed that Montana's 1990 tax burden was eighth highest in the nation. That assertion proved incorrect because it was based on erroneous information reported by the Bureau of the Census. The pot began to boil shortly before the November Special Session when Professor Natelson was accused of knowingly using incorrect information to garner support for the petition drive to suspend House Bill No. 671.

Interstate tax comparisons are usually measured in terms of total tax revenue per capita or total tax revenue in relation to personal income (i.e., total revenue as a percentage of personal income or total revenue per \$100 or per \$1,000 of personal income). Unfortunately, these measures are a tenuous indicator of a state's actual tax burden. Many states, especially energy-producing states and states with strong tourism-related industries, are able to export their tax burdens to nonresidents. Alaska and Nevada are two examples of states that are able to export a large portion of their tax burden. While ranking states according to tax levels in relation to personal income may lead to invidious comparisons, the information is useful in analyzing historical trends in taxation for a particular state or analyzing historical trends within regions of the nation or for the nation as a whole.

This edition of "The Back Page" briefly describes how reporting errors in both fiscal year 1990 and fiscal year 1991 resulted in various rankings for Montana in each of those years and then analyzes tax collections in Montana since 1970 in relation to personal income.

### MONTANA TAXES IN PERSPECTIVE

by Jeff Martin

### SNAFUS IN CENSUS REPORTING

State and local tax collections are reported in Government Finances, published annually by the Bureau of the Census. This publication also includes population and personal income estimates for the relevant fiscal year for each state as well as tax revenue per capita and tax revenue per \$1,000 of personal income. It is this information that is used to rank the states. For fiscal year 1990, the Bureau of the Census double-counted the revenue from the 45-mill (now 55-mill) school equalization

levy. Previously, the school equalization levy had been reported as county tax revenue. As a result, total tax collections for Montana were shown to be \$82 million too high. Because of the reporting error, Montana ranked 10th (when it should have ranked 16th) for tax collections in relation to personal income.

For fiscal year 1991, tax collections reported for Montana by the Bureau of the Census were \$85 million too low. The Bureau of the Census did not include \$43.6 million in county property tax collections for school retirement and school transportation levies, and Montana did not report \$41.7 in local government severance taxes. Because of these errors, Montana ranked 38th for tax collections in relation to personal income. The Montana Department of Revenue has worked with the Bureau of the Census to correct these reporting errors and to ensure that similar problems do not occur in the future. The Department has recalculated fiscal year 1991 relative tax collections based on the corrections for that year, and Montana ranks 24th in state and local tax collections in relation to personal income.

#### TRENDS IN MONTANA TAX REVENUE

Table 1 shows trends since 1970 in state and local tax revenue relative to personal income in Montana. Information on tax revenue is presented in tax collections per \$100 of personal income. The Bureau of Economic Analysis (U.S. Department of Commerce) routinely revises state personal income estimates. The analysis below uses these revised estimates rather than estimates reported by the Bureau of the Census. The first three columns of Table 1 show yearly changes in total, state, and local revenue. The fourth column shows state tax revenue as a percentage of total state and local tax revenue.

Although total state and local tax revenue per \$100 of personal income fluctuates over the period, total state and local tax collections generally grew at about the same average annual rate as total personal income (7.9% a year for state and local revenue versus 8.2% a year for personal income). However, state tax collections grew by an average annual rate of 9.4%, while local taxes grew by 5.9%. Increasing or decreasing tax levels (measured in relation to personal income) do not necessarily mean that total tax collections are rising or falling, just that collections are growing faster or slower than state personal income. There are a few instances in which total, state, or local tax collections fell from the previous year.

Ignoring for the moment large increases in personal income taxes and "other" taxes that occurred in 1972 (see below), total state and local tax revenue reached a peak in 1978 of \$13.09 per \$100 of personal income.

Between 1978 and 1983, total state and local tax revenue grew more slowly than personal income, and it has fluctuated since then. When viewed separately, however, state tax revenue and local tax revenue per \$100 of personal income have shown divergent trends. Local tax revenue exceeded state tax revenue until 1973 but has been below state revenue since then. Between 1970 and 1991, local tax revenue fell by 36%, while state tax revenue increased by 27%. A look at some of the underlying causes indicates that this divergence is not surprising.

Table 1: Montana State and Local Tax Revenue per \$100 of Personal Income, 1970 to 1991					
Fiscal Year	Total	Local	State	State as % of Total	State Rank
1991	\$11.57	\$4.23	\$7.34	63.4%	24
1990	\$11.96	\$4.37	\$7.59	63.4%	16
1989	\$12.20	\$5.14	\$7.07	57.9%	15
1988	\$12.21	\$5.16	\$7.05	57.7%	12
1987	\$11.20	\$5.21	\$5.99	53.5%	21
1986	\$12.10	\$5.47	\$6.63	54.8%	9
1985	\$12.53	\$5.50	\$7.03	56.1%	6
1984	\$12.07	\$5.37	\$6.71	55.5%	9
1983	\$11.72	\$5.47	\$6.25	53.3%	7
1982	\$12.43	\$5.62	\$6.81	54.8%	6
1981	\$12.59	\$5.83	\$6.76	53.7%	8
1980	\$12.53	\$5.59	\$6.94	55.4%	8
1979	\$12.18	\$5.28	\$6.90	56.6%	10
1978	\$13.09	\$6.19	\$6.90	52.7%	11
1977	\$12.91	\$5.99	\$6.92	53.6%	11
1976	\$12.73	\$6.11	\$6.63	52.0%	12
1975	\$11.93	\$5.86	\$6.06	50.8%	14
1974	\$12.18	\$5.96	\$6.21	51.0%	12
1973	\$12.51	\$6.35	\$6.16	49.2%	12
1972	\$14.07	\$7.07	\$7.00	49.8%	6
1971	\$12.17	\$6.64	\$5.52	45.4%	12
1970	\$12.41	\$6.63	\$5.79	46.6%	13

Note: Totals may not add due to rounding.

Source: Bureau of the Census, Government Finances, various years; U.S. Bureau of Economic Analysis, Regional Economic Information System

### Local Tax Revenue

In a situation with a constant tax base and with constant tax rates, property tax revenue typically grows more slowly than personal income. Property taxes in Montana have historically accounted for over 95% of all local tax revenue, thus robust growth in local tax revenue in the state would not be expected. The Montana Legislature has from time to time reduced the statutory tax rates applied to most taxable property within the state or has provided property tax exemptions (e.g., business inventories). Voter approval of Initiative Measure No. 105 in 1986 has limited local governments' ability to increase property tax revenue. During the June 1989 Special Session, the Montana Legislature combined several personal property classes and reduced the tax rate applied to this property to 9%. The state reimburses local governments for the loss in personal property tax revenue.

Economic events beyond the control of the state, such as the precipitous decline in energy prices in the last half of the 1980s, also contributed to the decline in the local tax base statewide. Finally, the 55-mill county school equalization levy and the 40-mill state levy to fund schools, as well as the local government severance tax, are considered state tax revenue. As a result, the state's share of total tax revenue has increased significantly in the last 2 fiscal years, while the local share has declined dramatically.

### State Tax Revenue

The state tax base is much broader than the local tax base. The major state taxes include the personal income tax; the corporation license tax; oil, natural gas, and coal severance taxes; and a myriad of "other taxes". Table 2 shows the trends for each of these taxes since 1970. The growth in state tax revenue relative to personal income has been much stronger than at the local level. In collections per \$100 of personal income, personal income tax collections were 38% higher in 1991 than they were in 1970, corporation income tax collections were 40% higher, and severance tax collections were 238% higher. Tax revenue from "other" sources was about 6% higher in 1991 than in 1970.

Personal Income Taxes: The growth in state tax revenue has not traced a smooth upward line, with economic forces and legislative actions affecting the trends. Although the current personal income tax rates have been in effect since 1969, other factors have contributed to the rise and fall of personal income tax collections per \$100 of personal income. In 1971, voters approved a 40% surtax on personal income in lieu of a sales tax. In 1972 and 1973, personal income taxes per \$100 of personal income were the highest of the period (\$2.61 and \$2.54,

respectively). In 1973, the surtax was reduced to 10% and remained in effect until 1981, when it was repealed. On November 4, 1980, Montana voters approved Initiative Measure No. 86 to index personal income taxes to inflation. The relation of personal income tax collections to personal income in the 1980s has also been affected by major changes in federal income tax law in 1981 (Economic Recovery Tax Act), 1982 (Tax Equity and Fiscal Responsibility Act), and 1986 (Tax Reform Act); by economic recession and slow recovery; and by the imposition in Montana of a 10% income surtax for tax years 1987 through 1989 and a 5% education income surtax for tax year 1990.

Corporate Income Taxes: Two distinct trends in corporate income taxation in relation to personal income may be observed. Between 1970 and 1981, corporation tax collections per \$100 of personal income increased from \$0.43 to \$0.77 in an almost continuous upward trend. Much of the consistent growth pattern may be attributable to energy and mineral development as well as to expansion in the wood products industry. Between 1981 and 1991, corporation income tax collections have exhibited the volatility normally associated with this tax. The economic recessions of 1980 and 1982, the ups and downs of the natural resource industries, and changes in federal corporate income tax law all contributed to the swings in corporation income taxes both in absolute and in relative terms. The corporation tax rate of 6 3/4% has been in effect since 1971.

Severance Taxes: Between 1970 and 1982, collections from severance taxes on oil, natural gas, and coal showed the strongest growth of any tax collections in relation to personal income, increasing from \$0.21 per hundred dollars of personal income in 1970 to \$1.92 in 1982. Severance taxes leveled off at approximately \$1.66 for the next 3 years before falling to \$0.71 by 1991. Lower energy prices and declining production accounted for much of the decrease, while reductions in severance tax rates and various production incentives have accounted for the rest.

Other Taxes: The trend in "other" sources of tax revenue has exhibited an erratic pattern since 1970. In 1991, tax revenue per \$100 of personal income from these sources was about 6% higher than it was in 1970. Because of the diversity of components that are included in other sources of tax revenue, no analysis of this tax source is presented.

Table 2: Montana State Tax Revenue per \$100 of Personal Income, 1970 to 1991

Fiscal Year	State	Personal Income	Corporate Income	Severance	Other
1991	\$7.34	\$2.42	\$0.60	\$0.71	\$3.61
1990	\$7.59	\$2.47	\$0.71	\$0.85	\$3.56
1989	\$7.07	\$2.58	\$0.55	\$0.83	\$3.12
1988	\$7.05	\$2.40	\$0.46	\$1.11	\$3.08
1987	\$5.99	\$1.97	\$0.35	\$1.03	\$2.64
1986	\$6.63	\$1.85	\$0.63	\$1.40	\$2.75
1985	\$7.03	\$1.99	\$0.69	\$1.65	\$2.70
1984	\$6.71	\$1.96	\$0.41	\$1.66	\$2.68
1983	\$6.25	\$1.85	\$0.44	\$1.67	\$2.29
1982	\$6.81	\$1.85	\$0.57	\$1.92	\$2.46
1981	\$6.76	\$2.12	\$0.77	\$1.44	\$2.43
1980	\$8.94	\$2.15	\$0.73	\$1.51	\$2.56
1979	\$6.90	\$2.43	\$0.62	\$0.93	\$2.91
1978	\$6.90	\$2.52	\$0.60	\$0.91	\$2.87
1977	\$6.92	\$2.48	\$0.55	\$0.96	\$2.93
1976	\$6.63	\$2.33	\$0.55	\$0.75	\$3.00
1975	\$6.06	\$2.31	\$0.57	\$0.38	\$2.80
1974	\$6.21	\$2.23	\$0.44	\$0.28	\$3.26
1973	\$6.16	\$2.54	\$0.40	\$0.17	\$3.05
1972	\$7.00	\$2.61	\$0.43	\$0.17	\$3.79
1971	\$5.52	\$1.72	\$0.39	\$0.21	\$3.20
1970	\$5.79	\$1.75	\$0.43	\$0.21	\$3.40

Note: State totals may not add due to rounding.

Source: Bureau of the Census, Government Finances, various years;  
U.S. Bureau of Economic Analysis,  
Regional Economic Information System

## STATE RANKING

Table 1 also shows the trend in the state's ranking in relation to other states and the District of Columbia in terms of total tax collections relative to personal income. These rankings are derived from Government Finances and do not reflect Bureau of Economic Analysis revised personal income estimates. The state's ranking remained fairly constant between 1970 and 1979 (except for 1972, when the 40% surtax was in effect). Between 1980 and 1986, the state ranked consistently in the top ten. However, this occurred during the period of rapid energy development in

the state when a substantial portion of the state's taxes were exported. Since 1986, the state's ranking has been generally higher (i.e., lower tax revenue in relation to personal income) than in the past.

#### CONCLUDING REMARKS

The information presented above does not address whether Montana's taxes are too high or too low. These issues are resolved by the state's political process. However, when the effects of the "seven percent solution" and the effects of property reappraisal on the state's ranking and tax revenue in relation to personal income are known, the issue may be refocused in a new teapot. However, we shall have to wait for the next exciting edition of Government Finances.



## INTERIM CALENDAR

### MAY

May 2, State Housing Task Force, Room 437, 10:00 a.m.

May 6, Environmental Quality Council, Room 104, 8:30 a.m.

May 6, Committee on Indian Affairs, Room 437, 10:00 a.m.

May 11, EQC Transportation Energy Collaborative, DNRC Director's Conference Room, 9:00 a.m.

May 11, Judicial Unification and Finance Commission, Room 437, 10:00 a.m.

May 12, Judicial Unification and Finance Commission, Room 437, 8:00 a.m.

May 12, EQC Hazardous Waste Management Working Group

May 13, EQC Hazardous Waste Management Working Group, DNRC Director's Conference Room, 9:00 a.m.

May 13, Legislative Finance Committee on Realignment of Joint Appropriations Subcommittees, Room 108, 9:00 a.m.

May 13, Legislative Council, Room 104

May 20, Subcommittee on Workers' Compensation Alternatives 24-Hour Coverage Subcommittee, Room 108, 10:00 a.m.

May 23 and 24, Water Policy Committee, Cottonwood Inn, Glasgow

May 26, Revenue Oversight Committee SID Subcommittee, Room 104, 1:00 p.m.

May 27, Revenue Oversight Committee, Room 104, 9:00 a.m.

May 31, Memorial Day, holiday



**JUNE**

June 3, Subcommittee on School Revenue

June 9, Legislative Finance Committee Subcommittee on Review of  
Dedicated Revenue Provisions and Statutory Appropriations

June 9 and 10, Legislative Finance Committee, Room 104

June 24, Subcommittee on Insurance Issues

June 25, Legislative Audit Committee

June 30, Subcommittee on Veterans' Needs

Montana Legislative Council  
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Helena MT 59620-1706

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